

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
CompTel's Filing in CC Docket)
No. 92-77 Proposing a Rate Ceiling)
on Operator Service Calls)

CC Docket No. 95-473

DOCKET FILE COPY ORIGINAL

COMMENTS OF ONE CALL COMMUNICATIONS, INC.
d/b/a OPTICOM TO COMPTTEL'S FILING IN
CC DOCKET NO. 92-77 PROPOSING A RATE CEILING
ON OPERATOR SERVICE CALLS

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Summary

One Call Communications, Inc. d/b/a OPTICOM ("Opticom") supports the Competitive Telecommunications Association's ("CompTel's") intent in proposing an alternative to the Billed Party Preference ("BPP") docket. BPP is an idea whose time has passed. The enormous costs of BPP far outweigh any perceived benefits. Moreover, any alleged benefits are now extremely speculative, based on the overwhelming success of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") which regulates the operator services industry.

The operator services industry may still have some problems that need to be remedied. However, even if that is true, both BPP and rate caps are a fairly drastic solution to problems caused by only a few operator services providers ("OSPs"). Both TOCSIA and the Commission's rules and enforcement powers may be equally effective in ensuring that the rates charged by OSPs are just and reasonable. If the Commission does not so conclude, there are numerous legal and factual issues that are raised by the suggestion of rate caps which need to be addressed before any such proposal is implemented. Unfortunately, and despite their superficial appeal, the rate caps, as proposed, do not consider OSP costs in determining a rate ceiling and, as such, would violate TOCSIA. Moreover, the imposition of rate caps without due process for each OSP may violate the hearing requirements of Section 205 of the Communications Act.

If the Commission is intent on concurring with CompTel's proposal, it is essential that typical OSP costs are considered when setting a rate ceiling. Indeed, even if a viable rate ceiling is found, the Commission must also consider how and when these rates will need to be periodically reviewed and changed. The benefits of rate caps may well be outweighed by procedural and substantive issues that their imposition would raise. In the final analysis, the problems perceived by the Commission in the BPP docket may already have been resolved in the marketplace. To the extent any remain, aggressive Commission enforcement of TOCSIA and its corresponding Communications Act provisions may be more practical solutions.

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ON OPERATOR SERVICE CALLS

One Call Communications, Inc. d/b/a OPTICOM ("Opticom")¹ is an interexchange carrier ("IXC") providing tariffed intrastate, interstate and international 1+ and 0+ services throughout the United States. Opticom, by its attorneys, hereby files comments in response to the Commission's request for comments on the Competitive Telecommunications Association's ("CompTel's") *ex parte* Filing in Docket No. 92-77 proposing a rate ceiling on operator service calls.²

I. Introduction

On March 7, 1995, CompTel, the American Public Communications Council, Bell Atlantic, BellSouth Telecommunications, MFS Communications, NYNEX, Teleport

¹Opticom is headquartered in Carmel, Indiana.

²*Ex Parte* Communication, CC Docket No. 92-77 (released March 13, 1995) (hereinafter referred to as "*Ex Parte* Communication").

Communications Group, and U.S. West (collectively "CompTel") filed an *ex parte* proposal in CC Docket No. 92-77 for a rate cap on 0+ operator service calls. The proposal suggests the use of a benchmark rate on a per minute basis, without regard to time-of-day, distance or call type. CompTel proposes rate caps as an alternative to BPP. The Commission seeks comments on this proposal.

The BPP docket was first introduced in May, 1992, to discuss the feasibility of a new, automated routing methodology for interstate, interLATA 0+ calls. Since the BPP proceeding was initiated, TOCSIA³ has been passed by Congress and implemented by the Commission. The regulations codifying TOCSIA produced numerous consumer safeguards such as mandatory call branding, payphone signage, unblocking of access codes and rate quotes available upon request.⁴ Since that time, IXC's have spent millions of dollars educating consumers on the "how-to's" of the operator services industry, especially how customers can "dial around" the presubscribed OSP in order to reach their preferred carrier. This education has ensured the provision and success of dial around access and competitive rates.

The CompTel proposal recognizes the success of TOCSIA and the resulting consumer education efforts of most IXC's. As stated in its *ex parte* letter to the Commission, BPP is "now a hugely expensive solution to a small and diminishing problem."⁵ The record compiled in the BPP docket provides convincing evidence that any benefits to be provided by this new system are far outweighed by its tremendous costs. As stated by CompTel, local exchange carrier ("LEC") direct costs for BPP are estimated at \$1.7 billion⁶ while additional costs to be imposed

³See The Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. No. 101-435, 104 Stat. 986 (1990).

⁴47 C.F.R. §§64.703-705.

⁵Ex Parte Communication at 1.

⁶Id. at 2 (citing AT&T Reply Comments at 5 and Attachment B (September 14, 1994)).

on IXC's and aggregators are estimated in the hundreds of millions of dollars.⁷ All of this money would come from ratepayer dollars.

Moreover, additional research shows that BPP is not cost justified because only 19% of operator services calls placed using BPP would be routed to a carrier other than the one the consumer would have reached under the existing operator services system.⁸ Currently, 55 to 66% of all operator services calls placed utilize dial around access, reducing substantially the number of calls affected by BPP.⁹

The BPP docket also clearly indicates that any BPP system is years away. Even the few proponents of BPP estimate that, at a minimum, implementation of BPP will take three years from the time of a Commission order.¹⁰ By that time, emerging technologies, such as PCS, will have "further erode[d] the proportion of calls subject to BPP."¹¹

A majority of the interested parties to the BPP docket oppose its implementation for many of the reasons mentioned. As stated in the CompTel proposal,¹² BPP is opposed by four of the seven regional Bell operating companies, AT&T, most major competitive access providers, CompTel and its member 1+ and 0+ IXC's, more than twelve independent IXC's, the payphone industry association (the American Public Communications Council), the National Telephone Cooperative Association, Time-Warner, a majority of commenting state public utility

⁷Ex Parte Communication at 2 (citing AT&T Comments at 21-22 (August 1, 1994)).

⁸Id. (citing Frost & Sullivan, Inc. *Report on Applicability and Costs of Billed Party Preference: A Market Impact Report* (October 1993), submitted by CompTel, November 22, 1993).

⁹Ex Parte Communication at 3.

¹⁰Id. (citing Ameritech Comments at 18 (August 1, 1994); GTE Comments at 25 (August 1, 1994); Southwestern Bell Comments at 13 (August 1, 1994)).

¹¹Ex Parte Communication at 3-4 (citing NYNEX Comments at 7-8 (August 1, 1994); Bell Atlantic Comments at 11 (August 1, 1994)).

¹²Ex Parte Communication at 4.

commissions and dozens of aggregators and their trade associations. As recognized by most of the parties providing the services at issue, BPP is not the proper solution to the few remaining problems in the operator services industry.

Recognizing that BPP is a tremendously unpopular and unnecessary "solution" to a fairly insignificant problem, CompTel suggests that the sole surviving concern of the BPP proceeding may be the rates charged for operator services. As stated in CompTel's proposal, "in a statistically small number of cases, callers who choose not to dial around the presubscribed OSP are charged excessive rates."¹³ In an effort to appease the few consumers who choose not to dial around and indeed are charged "excessive" rates, CompTel has suggested that a rate ceiling would solve this problem without resorting to the implementation of a system like BPP.

II. Comments

Opticom is one of the many interested parties that has commented on the Commission's BPP proceeding since its inception. Opticom remains convinced that the enormous costs and other problems associated with BPP outweigh any potential benefits of this system. As stated by CompTel in its *ex parte* proposal, BPP will only serve to confuse consumers of 0+ interLATA services; restrict, if not eliminate, competition among OSPs, IXC's and independent payphone providers; and require an exorbitant amount of ratepayer dollars to implement.

Consequently, Opticom supports the suggestion of viable alternatives to the BPP system. Proposals such as CompTel's and the National Association of Attorneys General¹⁴ are further evidence that less drastic measures can be taken to solve any remaining "bugs" in the operator services industry. The CompTel proposal assumes that, for a very small percentage of 0+ calls

¹³Id. at 2.

¹⁴In re Disclosures by Operator Service Providers of Serving Public Phones, Petition of the National Association of Attorney's General Telecommunications Subcommittee for Rules to Require Additional Disclosures by Operator Service Providers of Public Phones, RM-8606.

made, ratepayers may be overcharged. Opticom, however, is not convinced that this is occurring to a level that would necessitate the solution proposed by CompTel. Of the millions of operator services calls placed through Opticom during 1994 only .0005% resulted in complaints filed at the Commission during that year. Indeed, even the Commission does not appear to be convinced that a solution so drastic as rate caps is necessary to curb the behavior of a few providers. Regardless of the cosmetic appeal of rate caps generally, the imposition of such regulation raises a variety of legal and factual issues that need to be addressed before it is imposed on the industry.

A. Legal Analysis of CompTel's Proposal

1. TOCSIA solves the problems and issues raised in BPP and CompTel's letter

Although One Call does not oppose CompTel's "workable" rate ceiling concept, it should be noted that the Commission has previously determined that TOCSIA has been successful in ensuring just and reasonable operator services rates, and, as such, neither BPP nor rate caps may be necessary.

TOCSIA mandated that the Commission provide Congress with three periodic reports evaluating the effectiveness of the Act, with an emphasis on operator services rates. In every such report, the Commission made a factual determination that market forces were securing just and reasonable rates and fair practices for consumers. In its Final Report to Congress,¹⁵ for instance, the Commission found that consumers were "aggressively" taking advantage of dial around access if they believed that the presubscribed OSP's rates were too high.¹⁶ The Commission concluded that a consumer's ability to dial around the presubscribed OSP "renders

¹⁵Final Report of the Federal Communications Commission Pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (November 13, 1992) (hereinafter "Final Report").

¹⁶Id. at 30.

the rates charged by the presubscribed OSP largely irrelevant."¹⁷ Data gathered by the Commission suggests that, on an average, OSPs are "not making extraordinary profits" and that a "vast majority" of all OSPs charge rates that are "close to the industry average."¹⁸ If the Commission's conclusions are correct, then the market should be permitted to continue to function unfettered by either BPP or rate caps.

2. The mandates of the Communications Act and TOCSIA may prohibit the imposition of rate caps

a. TOCSIA and the Communications Act require that carrier rates be based on costs

It is the Commission's duty, under the Communications Act, to ensure that the rates charged by telecommunications carriers are "just and reasonable" and non-discriminatory.¹⁹ The Commission has determined that the "touchstone" for determining whether or not a rate is just, reasonable and non-discriminatory is if it falls into a "zone of reasonableness."²⁰ This zone is "bounded at [the lower] end by investor interest against confiscation and at [the upper] end by the consumer interest against exorbitant rates."²¹

The Commission has "long adhered to the policy that the cost of providing service is 'at the heart'" of the statutory requirements of Section 201 of the Communications Act for ensuring

¹⁷Id. at 31.

¹⁸Id.

¹⁹47 U.S.C. §201-202.

²⁰In re Policy and Rules Concerning Rates for Dominant Carriers, *Notice of Proposed Rulemaking*, 2 F.C.C. Rec. 5208, 5212 (1987). See also FERC v. Penzoil Producing Co., 439 U.S. 508, 519 (1979). 2 F.C.C. Rec. at 5212; see also Jersey Cent. Power and Light Co. v. FERC, 768 F.2d 1500, 1503 (D.C. Cir. 1985), aff'd. on rehearing, 810 F.2d 1168 (D.C. Cir. 1987) (en banc) (quoting Washington Gas Light Co. v. Baker, 188 F.2d 11, 15 (D.C. Cir. 1950), cert. denied, 340 U.S. 982 (1951)).

²¹2 F.C.C. Rec. at 5212.

just, reasonable and non-discriminatory rates.²² Therefore, it follows that the costs incurred by OSPs are to be "directly controlling" in any rate scheme or, certainly, are "to be considered as the reference or benchmark by which to measure departures therefrom,"²³ especially where non-cost issues are considered in the ratemaking process. Any departure from rates based on costs must be justified.²⁴

In order to ensure just and reasonable rates based on carrier costs, the framers of TOCSIA opted against the imposition of rate of return regulation on operator services providers. TOCSIA mandates a "cost plus" analysis of the rates charged by operator services to determine whether they are just and reasonable. In particular, TOCSIA maintains that tariffed operator services rates will be found just and reasonable if they reflect the reasonable costs of providing the service plus a reasonable profit.²⁵ TOCSIA gives the Commission the power to identify an OSP rate level it deems presumptively lawful and require tariffs which charge above that level to be accompanied by cost support information explaining the basis for those rates.²⁶

Even if a rate ceiling is imposed and is based on carrier costs, it must also be determined whether some form of fully distributed costs, marginal or long-run incremental costs, or, indeed,

²²In re American Telephone and Telegraph Company, Revision to Tariff F.C.C. No. 259 (WATS) for Advanced 800 Service, 102 F.C.C. 2d 701, 706 (1984). See also Private Line Rate Cases, 34 F.C.C. 244, 297 (1961); 34 F.C.C. 217, 231 (1962).

²³In re Implementation of Requirements of the International Maritime Satellite Telecommunications Act, 91 F.C.C. 2d 245, 255 (1982). See also AT&T Private Line Cases, 61 F.C.C. 2d 587, 609 (1978); In re WATS, 35 F.C.C. 149, 153-56 (1963); 37 F.C.C. 688 (1964); In re Part 61 of the Rules, 25 F.C.C. 2d 957, 965 (1970); 40 F.C.C. 2d 149, 154 (1973); In re 48 KHz, 29 F.C.C. 2d 493 (1971); Hi-Lo, 55 F.C.C. 2d 224, 241 (1975); 68 F.C.C. 2d 362, 366 (1976); In re WATS, 59 F.C.C. 2d 671, 678 (1976); 64 F.C.C. 2d 538 (1977).

²⁴Private Line Rate Cases, 34 F.C.C. at 297; WATS, 59 F.C.C.2d at 678.

²⁵H.R. Rep. No. 213, 101st Cong., 1st Sess. (1989).

²⁶47 U.S.C. §204(a).

some other type or combination of costs should serve as the relevant costing standard.²⁷ For some OSPs, aggregate company full costs (fully distributed costs or "FDC") may best reflect rate levels.²⁸ FDC may or may not be appropriate for OSP ratemaking purposes. There are also a variety of FDC methods that may be used for assignment of costs. Other carriers may find marginal costing and pricing to be more useful and accurate than FDC.²⁹ Marginal costs can be determined on either a long-run or short run basis. This pricing theory may be optimal for some carriers but detrimental to others because of the freedom it allows a carrier to allocate residual costs.³⁰ Within all of these costing standards and methods, there are numerous substandards methodologies that would also need to be evaluated to determine which methodology is best suited for price cap regulation as applied to operator services providers. Furthermore, in determining the lawfulness of the rate levels at issue, the Commission must decide what circumstances must exist to justify any departure from the cost standard.

Rate cap regulation is not cost plus regulation. Rate caps divorce rates from costs, and therefore, may not allow OSPs to recoup their reasonable costs of providing service plus a reasonable profit, as mandated by TOCSIA. Indeed, rate regulation that disregards TOCSIA's

²⁷See *In re American Telephone & Telegraph Company, Long Lines Department, Revisions of Tariff FCC No. 260 Private Line Services, Series 5000 (TELPAC), Memorandum Opinion and Order*, 61 F.C.C.2d 587, 609 (1976) (hereinafter AT&T).

²⁸Id. at 619 (citing *Communications Satellite Corporation*, 56 F.C.C.2d 1101, 1131 (1975)). Fully distributed costs reflect a company's total revenue requirements and are comprised of current operating expenses (such as wages, salaries, maintenance, advertising, research, depreciation and operating taxes) plus an allowed rate of return.

²⁹See AT&T at 621. Under this economic theory, the price of every particular service is set according to the actual marginal or incremental cost of producing that exact service.

³⁰Id. at 626.

mandate to consider carrier costs for ratesetting purposes may be viewed as an unconstitutional taking.³¹

b. The Communications Act mandates that rates be carrier-initiated

The Commission's authority under the Communications Act to determine and prescribe lawful rates is not unlimited, but instead establishes very precise procedures and limitations.³² Underlying the basic issues raised by CompTel's proposal with respect to considering carrier costs when determining just and reasonable rates is Section 205 of the Act, which requires that rates be carrier-initiated. Congress, in enacting the carrier-initiated rate filing provisions of the Act, intended to strike a "careful balance of interests" between the Commission and the rate-filing carriers.³³ A carrier may file tariffs containing new rates at any time, and only after carrier rates are filed does the Commission have the power to investigate them.³⁴ Moreover, this type

³¹See e.g. *Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1967). A utility is entitled to rates that allow it, under "honest, economical and efficient management," to achieve a fair overall return. See also *Nader v. FCC*, 520 F.2d 182, 191 (1982) (citing *Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 692-95 (1923)).

³²*AT&T v. FCC*, 449 F.2d 439, 450 (D.C. Cir. 1971).

³³*AT&T v. FCC*, 487 F.2d 864, 872 (2nd Cir. 1973) (citing *United States v. SCRAP*, 412 U.S. 669, 697 (1973) which also stated that "specific statutory authority, rather than general inherent equity power, should provide the agency with its governing standards.")

³⁴Id. at 874 ("[t]he statutory scheme of the Communications Act reflects the realization of Congress that when a carrier is prevented from putting in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs.") (citing *United Gas Pipeline Co. v. Memphis Gas Division*, 358 U.S. 103, 113 (1958) which stated:

Business reality demands that [natural gas] companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance

(Footnote continued to next page)

of investigation must include a full opportunity for hearing and a finding that the rates to be prescribed are just and reasonable as supported by record evidence.³⁵ The Commission has no authority to circumvent the statutory mandates of Section 205 and prescribe rates in an alternate fashion.³⁶

B. The Commission Can Use Its Enforcement Powers To Prevent The Charging Of High Rates

As stated by CompTel, the problems associated with the operator services industry are not widespread, but instead arise with respect to only a few OSPs. As such, the public interest might be better served by use of the Commission's varied enforcement powers to address violations by individual carriers. The Commission has the authority under Section 503(b) of the Communications Act to impose fines or forfeitures on IXC's for violations of its operator services rules.³⁷ The Common Carrier Bureau's Enforcement Division as well as the Commission's Field Operations Bureau in coordination with state public utility commissions can monitor more closely OSP compliance with federal and state rules requiring the unblocking of access codes and prohibiting practices such as call splashing and billing for unanswered calls. Targeted enforcement actions by the Commission may be as viable a solution to BPP as rate caps.

C. Factual Analysis of CompTel's Proposal

Rate ceilings are not an attractive option to any provider of operator services. However, as contrasted with BPP, they may certainly be viewed as the lesser of two evils. If the

(Footnote continued from previous page)

and expansion of their systems through equity and debt financing would become most difficult, if not impossible. 358 U.S. at 113.

³⁵47 U.S.C. §205(a). See AT&T at 660 (citing Nader v. FCC, 520 F.2d 182 (D.C. Cir. 1975); 487 F.2d at 872).

³⁶487 F.2d at 880.

³⁷47 U.S.C. §503(b).

Commission concludes that the provision of operator services must be further regulated, then a significant number of factual questions and concerns need to be addressed.

1. A "workable" rate ceiling would be more representative if it was based on costs of a sample of typical OSPs, rather than the rates complained of by consumers

If the Commission decides that it has no recourse but to impose rate caps on the operator services industry, it must set acceptable price levels that reflect a typical OSP's costs. In its *ex parte* letter, CompTel defines a "workable" rate ceiling as one that should:

[S]trike a proper balance between the interests of consumers in obtaining reasonable rates and aggregator's rights to recover their costs of making equipment available for public use. The ceiling should also allow for competitors to set rates based on the marketplace so that competition can work effectively. It should not be based on the rate levels or costs structure of any particular carrier, dominant or otherwise.³⁸

CompTel's suggested rate ceiling is set below a sample of operator services rates that prompted consumer complaints to the Commission. However, the rate schedule does not indicate whether the sample rates complained of consist of unusually "excessive" operator services rates or "average" operator services rates. The rates complained of may certainly be exceptions to average operator services rates, not the norm. It is essential that Opticom, as well as other OSPs, be given an opportunity to evaluate the data as well as the rate setting methodology used by CompTel before it can comment specifically and in any meaningful manner as to the accuracy and fairness of the rates proposed.

Setting a rate cap standard based on the consumer sample may be unwise and unfair to a majority of OSPs. Many small to mid-sized OSPs that compete with AT&T, MCI, Sprint, and the LECs for customers charge rates for some call types that are higher than these large carriers, purely out of cost necessity. As a result, the sample consumers may have complained of any rate

³⁸Ex Parte Communication at 7.

that exceeded the charges of the major carriers, regardless of whether or not the Commission might find that rate to be just and reasonable based on the carrier's costs plus a reasonable profit. These kind of "complaints" should not be used in any sample to set a rate cap.

The most difficult part of implementing any kind of rate cap is ensuring that the rates imposed on all carriers are indeed "just and reasonable" and take into consideration the costs of a majority of carriers, not just the largest carriers. This may be a very time consuming and complicated process for the Commission. The Commission's Final Report to Congress under TOCSIA indicates that the expenses, revenues and investment of every OSP varies substantially.³⁹ The Commission also acknowledged that the "higher rates charged by some OSPs are in many cases driven by higher costs." The rates charged by the big IXC's and LEC's are based on economies of scale that permit them to keep their costs and rates lower than small and mid-sized OSPs. The Commission, therefore, would be more likely to come up with a set of just and reasonable rates if it evaluated the costs of a sample of small and mid-sized operator services providers and set rates that reflect the reasonable costs of providing service plus a reasonable profit accordingly. Otherwise, the ideal of a "workable" rate ceiling will never come to pass because rates will not be "based on the marketplace" and there will be no competition to "work effectively."

The Commission must also explore how the rate caps selected will be adjusted (and how frequently) to accommodate such factors as the rate of inflation (by choosing some measure of or surrogate for the purchasing power of money, such as the Gross National Product-Price Index, the Consumer Price Index or the Producer Price Index) and changes in productivity (in industry generally and/or the telecommunications industry, specifically). After selecting that index, the Commission must also determine the change in that index over a fixed period that would serve as a basis for adjusting the price caps. A general review of the rate ceiling may also be needed after

³⁹Final Report at 32.

the passage of a set period of time or the occurrence of a specific event (e.g., the filing of new access charges). The value attached to the factors listed above would also have to be modified up or down in response to periodic requests for rate adjustments based on an individual carrier's cost concerns.

CompTel's letter is only the beginning of any evaluation the Commission would have to undergo in investigating the applicability, feasibility and necessity of a rate ceiling. Numerous additional questions need to be answered before any such proposal is implemented.

For instance, the CompTel rate cap proposal assigns a maximum charge for simple 0+ calls, limited to collect, calling card, third party and person-to-person call types. The benchmark rate is to be adopted on a per minute basis, set without regard to time-of-day, distance or call type. However, OSPs offer a variety of services in addition to standard hotel and payphone service, including call origination from private branch exchanges, voice messaging and voice mail, as well as store and forward technology which are completely different than traditional operator services with respect to time-of-day, distance or call type. It is unclear as to how such services will fit into the rate schedule proposed by CompTel. Certainly, some services are structured and priced in such a way that application of a price cap to them would be excessively difficult. CompTel proposes a very simple rate cap seemingly based on very simple data. However, simplicity in this context overlooks many additional issues that need to be considered.

2. Frequent review of rate caps and ease of petitions to raise rates based on cost concerns is essential

A price cap scheme should anticipate periodic revisions which are tied to a carrier's costs of providing service. If any kind of rate cap is implemented, it is essential that all providers of operator services maintain an immediate right to individualized Commission review of their rates based on periodic cost concerns. CompTel suggests, for instance, that an expedited paper hearing be used in conjunction with a simplified method of cost justification.

CompTel suggests that carriers justify proposed rate increases by providing cost information in seven categories: (1) access costs, (2) billing and collection costs, (3) network

costs, (4) operator and call processing costs, (5) general and administrative costs, (6) cost of capital, and (7) commissions, surcharges and similar fees. It is also essential that the Commission consider some "intangible" or exogenous costs of doing business; for instance, the costs of entry into a previously non-competitive marketplace; changes in the general level of prices, changes in national tax policies and rates, and rate changes imposed by regulatory, legislative or judicial fiat. Moreover, the rates charged for operator services would have to be re-evaluated in conjunction with technological innovations in the industry. OSPs should receive due credit for providing new service and technological benefits to consumers.

3. Failure to pay by end users should result in termination of local service

Currently, the failure of a consumer to pay the operator services portion of his or her bill may not result in termination of the local service. If rate caps are instituted, then the Commission should impose liability for operator services calls on the consumers who incur them. With rates caps in place, consumers could never use the excuse of "excessive" rates to refuse payment for operator services calls. As a result, non-payment of operator services charges to a LEC or credit card company should result in automatic termination of local service by the LEC.

4. Rate ceilings necessitate rate floors

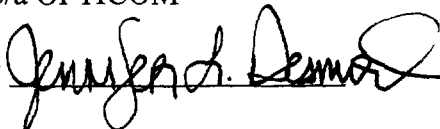
CompTel's proposal suggests maximum charges for simple 0+ calls. Will there be a minimum charge allowable? A price cap determined solely in terms of a ceiling might permit large carriers to price one service at predatory levels and recoup the shortfall from other services. A rate schedule setting both a minimum (rate "floor") and maximum charge for operator services calls is essential to prevent large IXC's or LEC's from undercutting smaller OSPs and providing operator services at rates lower than costs.

III. Conclusion

In its final report to Congress pursuant to TOCSIA, the Commission found that over 90% of OSPs complied with the two most important requirements of the Act: that access codes always remain unblocked and that the OSP clearly identify itself to the calling party. Compliance with these essential requirements, the Commission maintained, ensured that consumers would be able to exercise an educated choice when placing a 0+ call and that the charges that they would incur would be just and reasonable. The Commission has maintained that the combination of TOCSIA, OSP and aggregator rules and Commission enforcement actions have served to resolve any "residual" problems in the OSP industry. Indeed, the Commission has found that the problem of "excessive" rates is confined to a "small segment" of the industry which consumers are increasingly able to avoid by utilizing the highly advertised dial around option. The time and need for a system such as BPP has clearly come and gone. Alternatives to BPP should be encouraged, but only to the extent the Commission concludes that they are needed because the marketplace is not functioning properly. Even if the Commission does so conclude, there are numerous legal and factual issues, such as the dictates of TOCSIA and the hearing requirements of the Communications Act, that need to be considered and may make the instant rate cap proposal impractical. In the final analysis, vigorous enforcement of TOCSIA and its related provisions by the Commission may already provide the means by which the final concerns of BPP can be alleviated.

Respectfully submitted,

One Call Communications, Inc.
d/b/a OPTICOM

By 

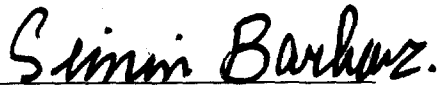
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments have been sent by United States first class mail, postage prepaid, or by hand-delivery, this 12th day of April, 1995, to the following:

Formal Complaints Branch
Federal Communications Commission
Enforcement Division
Common Carrier Bureau
Plaza Level
1250 23rd Street, N.W.
Washington, D.C. 20554

International Transcription Services
Room 140
2100 M Street, N.W.
Washington, D.C. 20037



Simin Barbour